

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FAMILY COURT APPEAL NO.187 OF 2017

Prashant Rupchand Raoba Pol	 Appellant
versus	
Mrs.Swetha Prashant Pol	... Respondent

.....

- Mr.Kunal Bhanage, Advocate for Appellant.
- Mr.Yogiraj Purwant a/w Mr.Rushikesh Kale, Advocate for Respondent.

**CORAM : INDRAJIT MAHANTY &
SARANG V. KOTWAL, JJ.**
DATE : 04th JANUARY, 2019.

P.C. :

1. Heard both the parties through their learned Counsel.
2. The Appellant has challenged the Judgment and Order dated 01/07/2015 whereby his Petition No.A-2695 of 2014 filed before the Family Court, Bandra, Mumbai, was dismissed. We have perused the original Petition filed in the Family Court and the prayers read thus;

- (a) *This Hon'ble Court be pleased to pass an order judiciary [sic.] separation U/S 10 and decree of Divorce dissolving the marriage of the Petitioner and the Respondent solemnized on dated 25/02/2014 at New Budhwar Peth Citi Bus Depot Dhor Galli, Sant Galli Solapur Maharashtra solemnized as per Hindu rites and customs u/s. 13(ia) and [sic.] of Hindu Marriage Act, 1955.*
- (b) *This Hon'ble Court be pleased to pass an order judiciary [sic.] separation U/S 10 and decree of Divorce u/s 13(ia) and [sic.] of Hindu Marriage Act, 1955 to the parties because Respondent is having a venereal disease more than two years.*
- (c) *Any other and further reliefs as this Hon'ble Court may deem think, fit and proper.*

3. We have reproduced these prayers exactly as they appear in the Petition. We find that these prayers are not happily worded and create confusion. Even the sections are not mentioned properly.

4. The learned trial Judge has observed that the Petition was filed for judicial separation u/s 10. Although section 13(1) (ia), was mentioned; in the prayer clause the Petitioner had asked only for judicial separation. The Appellant invited these observations because the prayers in the Petition were not made properly. The learned Judge dismissed the Petition on the ground that the Petitioner had sought the relief of judicial separation in the Petition and in the affidavit of evidence he had prayed for divorce. The Petition was dismissed because of this variance.
5. Vide earlier order dated 15/12/2017 passed in this Family Court Appeal, we had indicated that the matter would be decided finally at the admission stage itself. Accordingly, today we have heard both the parties.
6. Looking at the nature of the prayers made in the original Petition and the observations made by the learned Judge, we are satisfied that this matter deserves to be remanded

back to the Family Court for fresh disposal. Liberty is granted to the Petitioner to amend his prayers in the original Petition. Both the parties shall appear in the Family Court on 21/01/2019 and make efforts to assist the Court in disposal of the Petition as early as possible. The present Appeal is disposed of in the aforesaid terms.

7. Before parting with this order, we deem it necessary to mention that in such cases where the prayers are confusing and are contrary to each other, the Courts should endeavor to bring this fact to the notice of the parties at the initial stage itself, instead of proceeding with the matter and wasting precious time in the process.
8. Parties to act on an authenticated copy of this order.

(SARANG V. KOTWAL, J.)

(INDRAJIT MAHANTY, J.)